

ISSUE DATE: June 25, 1996

DOCKET NO. E-002/PA-95-500

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Northern States Power  
Company's Petition for Approval to Merge  
with Wisconsin Energy Corporation

ISSUE DATE: June 25, 1996

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**PROCEDURAL HISTORY**

On August 4, 1996, Northern States Power Company (NSP or the Company) filed its petition for approval of a merger with Wisconsin Energy Corporation (WEC) in the above-captioned matter. As part of its filing, NSP also requested Commission approval to acquire certain gas properties of NSP-Wisconsin, to defer accounting on its merger expenses, and to reduce retail electric rates by 1.5 percent across the board and freeze them for four years.

Pursuant to Commission notice which varied the time frame for comments, interested parties filed initial comments and petitions to intervene by January 15, 1996. The following parties were granted intervenor status and filed initial comments in this proceeding: The Izaak Walton League, Minnesotans for an Energy Efficient Economy and the Environmental Law and Policy Center of the Midwest (The Environmental Coalition); the City of St. Paul; the Energy CENTS Coalition; Otter Tail Power Company; Minnesota Power; Wisconsin Public Service, Madison Gas and Electric, Wisconsin Electric Cooperative Association and the Citizen's Utility Board (Wisconsin Intervenors); the International Brotherhood of Electrical Workers; Cooperative Power; and Dairyland Power. The Department of Public Service and the Office of the Attorney General - Rural Utilities and Antitrust Divisions (OAG) intervened as of right and also filed comments in this matter. A number of parties requested that the Commission set this matter for contested case hearing.

On March 1, 1996, NSP and the following parties filed response comments: the Department, the OAG, the Wisconsin intervenors, Minnesota Power and Otter Tail Power, the Environmental Coalition, and the Energy CENTS Coalition.

On March 13, 1996, the Commission requested additional comments relating to procedural issues in this matter. The Commission invited comment in writing to be filed no later than Tuesday, April 2, 1996 addressing such procedural issues as the identification of any material factual disputes which would require a contested case hearing and the proposed scope of any hearing which has been requested.

Between April 1 and 3, 1996, the Commission received comments on these procedural issues from the following parties: the Energy Cents Coalition, the Wisconsin Intervenors, the Environmental Coalition, Otter Tail Power, the Department , the OAG, and Minnesota Power.

On June 6, 1996, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. JURISDICTION; REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission has jurisdiction over NSP's proposal to merge with Wisconsin Energy Corporation (WEC) under Minn. Stat. 216B.50 (1994). Among other things, the statute provides that no public utility shall merge or consolidate with another public utility operating in this state without first being authorized to do so by the Commission. The statute directs the Commission to investigate the proposal, with or without public hearing, and if it finds that the proposed action is consistent with the public interest it [the Commission] shall give it consent and approval by order in writing.

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's proposal on the basis of the record as currently developed. In order to assist the Commission in resolving material contested issues of fact in this matter, therefore, the Commission will refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

Following receipt of the Report and Recommendation of the Administrative Law Judge assigned to the case, the Commission will hold a hearing and issue an Order on the merits of the Company's proposal.

### **II. ISSUES TO BE ADDRESSED**

The issues referred to the OAH for contested case are as specified in Ordering Paragraph 1 of the Commission's ORDER ESTABLISHING PROCEDURAL FRAMEWORK in this matter, an Order issued contemporaneously with this NOTICE AND ORDER FOR HEARING. The specific issues referred for contested case proceeding are:

- what are the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger?
- what are the characteristics of a reasonable electric rate freeze (e.g. exceptions, duration, etc.) in these circumstances?
- what is the Company's pre-merger revenue requirement, based on a 1996 test year

adjusted for known pre-merger changes in 1997?<sup>1</sup>

- to what extent will it be feasible for Primergy to use its transmission ownership and control of the MAPP-WUMS interface to restrict the flow of non-Primergy sales over its wires?
- what, if any, is the impact of such a restriction on Minnesota utilities other than Primergy?

The contested case proceeding is not to address any other issues. As decided in the ORDER ESTABLISHING PROCEDURAL FRAMEWORK, the quality of customer service issue will be decided on the basis of the record after the comment period authorized in Ordering Paragraph 2 of the ORDER ESTABLISHING PROCEDURAL FRAMEWORK and the other issues (listed in Ordering Paragraph 3 of the ORDER ESTABLISHING PROCEDURE AL FRAMEWORK) are to be decided by the Commission on the basis of the current record. Those other issues are:

- gas rate freeze
- effective regulation
- low-income concerns
- environmental concerns
- gas property transfer
- deferred accounting of merger-related costs.

### **III. CONTESTED CASE PROCEDURAL OUTLINE**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Judge Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

#### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1994); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100

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<sup>1</sup> As stated in the ORDER ESTABLISHING PROCEDURAL FRAMEWORK issued contemporaneously in this matter, it is expected that the contested case consideration of this revenue requirement issue will include consideration and result in findings by the ALJ with respect to the appropriate rate base, income statement, rate of return, and test year revenue requirement.

to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with Judge Steve M. Mihalchick within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1994).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Susan Allender, Assistant Attorney General, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147, (612) 296-0410.

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

### **C. Intervention**

The Department of Public Service and the Office of the Attorney General - Residential Utilities and Antitrust Divisions (OAG) have intervened in this matter as of right.

The Commission has granted intervenor status in this matter to the following parties: the Izaak Walton League, Minnesotans for an Energy Efficient Economy and the Environmental Law and Policy Center of the Midwest (The Environmental Coalition); the City of St. Paul; the Energy CENTS Coalition; Otter Tail Power Company; Minnesota Power; Wisconsin Public Service, Madison Gas and Electric, Wisconsin Electric Cooperative Association and the Citizen's Utility Board (Wisconsin Intervenors); the International Brotherhood of Electrical Workers; Cooperative Power; and Dairyland Power.

Additional persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with Judge Steve M. Mihalchick. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

#### **D. Prehearing Conference**

A prehearing conference will be held in this matter on Wednesday, July 10, 1996, at 9:30 A.M. in the Large Hearing Room at the Commission offices, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147.

Persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of public hearings, discovery procedures, and similar issues.

#### **E. Time Constraints**

There is no statutory deadline by which the Commission must make its decision in this matter. The Commission notes that NSP's proposal to consummate the merger on January 1, 1997 is simply a proposal which will not interfere with the due and thorough deliberation of this matter by the ALJ and, ultimately, by the Commission.

#### **F. Application of Lobbying Provisions**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.* (1994), apply to certain Commission proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

#### **G. Ex Parte Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

### **ORDER**

1. A contested case proceeding shall be held on several issues raised in connection with Northern States Power Corporation's (NSP's) proposal to merge with Wisconsin Energy Corporation (WEC). The issues referred for contested case hearing are:
  - what are the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger?
  - what are the appropriate characteristics of an electric rate freeze (e.g. exceptions, duration, etc.) in these circumstances?

- what is the Company's pre-merger revenue requirement, based on a 1996 test year adjusted for known pre-merger changes in 1997?
  - to what extent will it be feasible for Primergy to use its transmission ownership and control of the MAPP-WUMS interface to restrict the flow of non-Primergy sales over its wires?
  - what, if any, is the impact of such a restriction on Minnesota utilities other than Primergy?
2. The proceeding shall begin with a prehearing conference on Wednesday July 10, 1996 at 9:30 A.M., in the Large Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.
  3. All parties to this proceeding may serve information requests on any other party regarding the above-listed issues referred for the contested case proceeding. Information requests shall be answered within eight working days of receipt.
  4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-1200 (TDD/TTY) or 1 (800) 657-3782.

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of Northern States Power  
Company's Petition for Approval to Merge  
with Wisconsin Energy Corporation

MPUC Docket No. E-002/PA-95-500

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing: July 10, 1996

Name and Telephone Number of Administrative Law Judge:

Judge Steve M. Mihalchick  
(612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_